

DOCKET FILE COPY ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

SEP 11 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Amendment of Parts 2, 15, and 97 )  
of the Commission's Rules To )  
Permit Use of Radio Frequencies )  
Above 40 GHz for New Radio )  
Applications )

International Harmonization or )  
Frequency Bands Above 40 GHz )

Petition of Sky Station )  
International, Inc. For Amendment )  
of the Commission's Rules To )  
Establish Requirements for a Global )  
Stratospheric Telecommunications )  
Service in the 47.2 - 47.5 GHz and )  
47.9 - 48.2 GHz Frequency Bands )

ET Docket No. 94-124  
RM-8308

RM-8784

PETITION FOR RECONSIDERATION

HUGHES COMMUNICATIONS, INC.

Gary M. Epstein  
John P. Janka  
Arthur S. Landerholm\*  
LATHAM & WATKINS  
1001 Pennsylvania Ave., N.W.  
Washington, DC 20004

GE AMERICAN COMMUNICATIONS, INC.

Peter A. Rohrbach  
Karis Hastings  
Hogan & Hartson  
555 Thirteenth Street, N.W.  
Washington, DC 20004

TRW INC.

Norman P. Leventhal  
Stephen D. Baruch  
David S. Keir  
Leventhal, Senter & Lerman  
2000 K. Street, N.W., Ste. 600  
Washington, DC 20006

MOTOROLA SATELLITE SYSTEMS, INC.

Philip L. Malet  
Brent H. Weingardt  
Steptoe & Johnson, LLP  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036

## TABLE OF CONTENTS

<b>I. SUMMARY.....</b>	<b>2</b>
<b>II. BACKGROUND.....</b>	<b>3</b>
<b>III. THE COMMISSION'S FINDING THAT SKY STATION-TYPE SERVICES ARE THE LIKELY DOMINANT USE OF THE 47 GHZ BAND IS UNSUPPORTED AND ARBITRARY .....</b>	<b>5</b>
<b>IV. THE COMMISSION'S LICENSING FRAMEWORK FOR THE 47 GHZ BAND IS UNTENABLE BECAUSE IT IS BASED UPON AN IRRATIONAL FINDING.....</b>	<b>10</b>
<b>V. THE COMMISSION HAS FAILED TO PROVIDE ADEQUATE NOTICE .....</b>	<b>11</b>
<b>VI. CONCLUSION.....</b>	<b>12</b>

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

SEP 11 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Amendment of Parts 2, 15, and 97 )  
of the Commission's Rules To )  
Permit Use of Radio Frequencies )  
Above 40 GHz for New Radio )  
Applications )

ET Docket No. 94-124  
RM-8308

International Harmonization or )  
Frequency Bands Above 40 GHz )

Petition of Sky Station )  
International, Inc. For Amendment )  
of the Commission's Rules To )  
Establish Requirements for a Global )  
Stratospheric Telecommunications )  
Service in the 47.2 - 47.5 GHz and )  
47.9 - 48.2 GHz Frequency Bands )

RM-8784

PETITION FOR RECONSIDERATION

Hughes Communications, Inc. ("HCI"); Motorola Satellite Systems, Inc.

("Motorola"); TRW, Inc. ("TRW") and GE American Communications, Inc. ("GE Americom")

hereby petition for reconsideration of the Commission's Second Report and Order in the above-

captioned proceeding,<sup>1</sup> in which the Commission adopted rules and policies relating to the

licensed, commercial use of the 47.2 - 48.2 GHz frequency band (the "47 GHz band"). The

Commission's adoption of the 47 GHz Order was arbitrary and capricious; therefore, the 47 GHz

<sup>1</sup> *Amendment of Parts 2, 15, and 97 of the Commission's Rules To Permit Use of Radio Frequencies Above 40 GHz*, 62 Fed. Reg. 43,116 (July 21, 1997) (the "47 GHz Order").

Order should be rescinded in its entirety. The Commission should consider the use of this band in the ongoing omnibus proceeding in IB Docket 97-95.

## **I. SUMMARY**

In the 47 GHz Order, the Commission designated the 47 GHz band for licensed, commercial use on the basis of area-wide licenses and divided, for licensing purposes, the 47 GHz band into 5 pairs of 100 MHz spectrum blocks, with each pair separated by 500 MHz of spectrum. By the Commission's own reasoning, these actions hinge upon the Commission's finding that the likely dominant use of the 47 GHz band will be "fixed, point to multi-point services delivered through the deployment of fixed platforms located in the stratosphere."<sup>2</sup> The Commission should reconsider the 47 GHz Order because the Commission has completely failed to explain the basis for this finding. In any event, this finding is irrational and unsupported by the current record, as the record, including three complete satellite system applications -- indicates that the likely dominant use of the band will be satellite services. Furthermore, the remainder of the Commission's actions in the 47 GHz Order -- as they are based upon an untenable premise -- are also not supportable and therefore also must be reconsidered.

The 47 GHz Order is part and parcel of, and inextricably intertwined with, the Commission's 1997 proceeding relating to its "master" proposed band plan for the 36.0 - 51.4 GHz band (the "V-band").<sup>3</sup> The 47 GHz band is one of the frequency bands that the Commission tentatively designated for Wireless Services in the V-band NPRM and that was the subject of significant contention by many of the commenters responding to the V-band NPRM,

---

<sup>2</sup> 47 GHz Order at ¶ 69.

<sup>3</sup> *Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5 - 38.5 GHz, 40.5 - 41.5 GHz, and 48.2 - 50.2 GHz Frequency Bands*, IB Docket 97-95, FCC No. 97-85, released March 24, 1997 (the "V-band NPRM").

including nearly all of the satellite industry commenters.<sup>4</sup> The 47 GHz Order selectively seeks to use the Commission's proposals in the V-band NPRM to support its conclusions, but conveniently ignores both the V-band NPRM and the comments filed in response to that proposal when those documents weigh against the Commission's findings and conclusions in the 47 GHz Order.

The Commission is correct to look to the V-band proceeding with reference to a decision on the 47 GHz band. The V-band NPRM and the comments filed in response present the most recent data and developments regarding this band, and the pleading cycle in the V-band proceeding closed nearly seven weeks prior to the release of the 47 GHz Order.<sup>5</sup> But the Commission cannot have it both ways; it cannot pick and choose among the data in the V-band record to support its preferred outcome in the 47 GHz Order, while completely ignoring data that militates against the Commission's preferred outcome. In fact, the record in the V-band proceeding, considered in its entirety, wholly undercuts the basis for the 47 GHz Order. The Commission's failure to address unrebutted evidence in the record renders the entire 47 GHz Order arbitrary and capricious.

## **II. BACKGROUND**

The 47 GHz band is currently allocated both domestically and internationally for the Fixed, Mobile, and Fixed-Satellite Services and for BSS feeder links.<sup>6</sup> In the 47 GHz Order,

---

<sup>4</sup> See, e.g., Comments of Motorola Satellite Systems at 8; Comments of TRW, Inc. at 10-11; Reply Comments of TRW, Inc. at 8-9; HCI Reply Comments at 23; Reply Comments of Lockheed Martin Corporation at 5.

<sup>5</sup> While the 47 GHz Order was adopted on May 2, 1997, three days prior to the due date for the initial comments in response to the V-band NPRM, the 47 GHz Order was not released until July 21, 1997. The seven weeks between the close of the V-band NPRM pleading cycle on June 3, 1997 and release of the 47 GHz Order provided ample time for the Commission to consider the pleadings filed in response to the V-band NPRM.

<sup>6</sup> See 47 C.F.R. § 2.106.

the Commission decided to adopt a licensing framework that it maintains will not exclude any service currently allocated in the 47 GHz band from developing in that band.<sup>7</sup> The Commission's rationale behind adopting a broad, "flexible" licensing framework was the need to balance the Commission's desire "to open spectrum for commercial development and eliminate the current regulatory barriers that prevent the spectrum from being used" with the perceived dearth of information "as to which potential services represent the highest valued use of the spectrum [at 47 GHz]."<sup>8</sup>

Although the Commission acknowledged that it has insufficient information about the highest valued user of the spectrum, it concluded that it would define the service rules for the 47 GHz band based upon the Commission's best judgment of the likely dominant user of the 47 GHz band.<sup>9</sup> The Commission found that the most likely dominant use of the 47 GHz band will be "fixed, point to multi-point services delivered through the deployment of fixed platforms located in the stratosphere."<sup>10</sup> Based upon that finding, the Commission designated the 47 GHz band for licensed, commercial use on the basis of area-wide licenses.<sup>11</sup> Upon the same basis, the Commission also divided the 47 GHz band for the purposes of licensing into five pairs of 100 MHz blocks, with each pair separate by 500 MHz of spectrum.<sup>12</sup> Unlike the more customary process for designating spectrum in the more developed, lower frequency bands, the Commission did not decide the more specific service, technical and licensing rules for the 47 GHz band. Instead it left those rules to a future notice of proposed rulemaking.<sup>13</sup>

---

<sup>7</sup> 47 GHz Order at ¶ 2, 61.

<sup>8</sup> 47 GHz Order at ¶ 10.

<sup>9</sup> 47 GHz Order at ¶¶ 11, 21.

<sup>10</sup> 47 GHz Order at ¶ 69.

<sup>11</sup> 47 GHz Order at ¶ 79.

<sup>12</sup> 47 GHz Order at ¶ 82.

<sup>13</sup> 47 GHz Order at ¶ 64.

### **III. THE COMMISSION'S FINDING THAT SKY STATION-TYPE SERVICES ARE THE LIKELY DOMINANT USE OF THE 47 GHz BAND IS UNSUPPORTED AND ARBITRARY**

It is axiomatic that, in every case, the Commission must (i) provide a reasoned basis for its decision, (ii) consider all of the evidence presented to it, and (iii) articulate a rational connection between the facts presented to the Commission and the choice it has made.<sup>14</sup> Moreover, it is also clear that the Commission's decisions must be supported by the record and must take into account all of the evidence before the Commission.<sup>15</sup> Just three weeks before the Commission released the 47 GHz Order, the Court of Appeals for the District of Columbia Circuit rebuked the Commission for conduct -- "fail[ing] to respond to contrary arguments resting on solid data" and "cavalierly" dismissing arguments with which it did not agree -- that the court termed the epitome of "arbitrary and capricious decisionmaking."<sup>16</sup> Unfortunately, the Commission's conduct is no better in this case.

The Commission's decision in this case fails in each of these regards with respect to the Commission's finding that the likely dominant use of the 47 GHz band will be "fixed, point to multi-point services delivered through the deployment of fixed platforms located in the stratosphere." First, the Commission utterly failed to explain the basis for this finding in the 47 GHz Order, and has ignored unrebutted evidence presented by the satellite industry that

---

<sup>14</sup> See *Motor Vehicle Manufacturers Association of the United States v. State Farm*, 463 U.S. 29, 46-57 (1983); *Schurz Communications v. FCC*, 982 F.2d 1043, 1050 (7th Cir. 1992) (vacating an FCC rule because key concepts were left unexplained and key evidence was overlooked); *Flagstaff Broadcasting Foundation v. FCC*, 979 F.2d 1566 (D.C. Cir. 1992) (the court will set aside an action by the Commission when it fails to provide a reasoned basis for its decision); *Bechtel v. FCC*, 957 F.2d 873, 881 (D.C. Cir. 1992) (Commission must address serious challenges); see also *Action for Children's Television v. FCC*, 821 F.2d 741, 746 (D.C. Cir. 1987).

<sup>15</sup> See *id.*

<sup>16</sup> *Illinois Public Telecommunications Association v. FCC*, 117 F.3d 555, 564 (D.C. Cir. 1997).

undercuts its finding. Second, the finding is irrational and unsupported on the current record.

Each of these failures makes the 47 GHz Order unsustainable and mandates its reconsideration.

Throughout the proceedings relating to the 47 GHz band, HCI and other satellite companies with proven track records at the Commission have proclaimed the importance of, and declared their intention to utilize, the 47 GHz band for satellite applications. HCI and Motorola filed comments and reply comments in response to the Sky Station Petition for Rulemaking and filed petitions to deny and reply comments in response to the Sky Station Application.<sup>17</sup> HCI and Motorola each emphasized the need to maintain access to the 47 GHz band for satellite systems.<sup>18</sup> Furthermore, in their comments in response to the V-band NPRM, the satellite industry commenters expressed a broad, clear consensus that the Commission should set aside substantial spectrum at V-band for future satellite systems and that the proposals to accommodate non-satellite systems in the 47 GHz band would have a disastrous effect on the satellite industry.<sup>19</sup> Furthermore, HCI, Motorola, and TRW each specifically suggested that the Commission should designate the 47 GHz band for primary or co-primary use by satellite systems.<sup>20</sup>

---

<sup>17</sup> See 47 GHz Order at Appendix A.

<sup>18</sup> Opposition and Reply of HCI at 2 (the 47 GHz band provides “much needed expansion capacity to accommodate future requirements of the FSS and BSS services”); Petition to Deny of HCI at 2; Reply of HCI at 2 (Sky Station service and system would displace one of the few remaining global FSS allocations); Opposition of Motorola Satellite Systems, Inc. at 3 (“the . . . 47 GHz band[] must be maintained for future FSS systems”); Reply Comments of Motorola Satellite Systems, Inc. at 2 (“the FSS allocation in [the 47 GHz band] is of the utmost importance to the satellite community”); Petition to Dismiss or Deny of Motorola Satellite Systems, Inc. at 2; Reply of Motorola Satellite Systems, Inc. at 2.

<sup>19</sup> See e.g., Comments of GE American Communications, Inc. at 3, 5, Comments of the Satellite Industry Association at 2; Comments of Motorola Satellite Systems, Inc. at 5, 7; Comments of TRW, Inc. at 3; Comments of Lockheed Martin Corporation at 3; Comments of HCI at 10.

<sup>20</sup> HCI Reply Comments at Appendix A; Comments of Motorola Satellites Systems, Inc. at 8; Reply Comments of TRW, Inc. at Table 1.



Indeed, each of these three companies, which have proven track records at the Commission for implementing systems that they propose, has buttressed its claim for 47 GHz satellite spectrum by filing a complete application for a satellite system that utilizes the 47 GHz band. Motorola filed its M-Star application in September 1996;<sup>21</sup> HCI filed its Expressway application on July 15, 1997; and TRW filed its GESN system application within the last two weeks. Furthermore, GE Americom will be filing an application using this band and, as the Commission is well aware,<sup>22</sup> additional satellite applications, from other established satellite industry companies that seek to utilize the 47 GHz band will most likely be filed in response to the Commission's now twice-extended 40 GHz filing window.

The 47 GHz Order painstakingly neglects this abundant evidence of heavy satellite interest in the 47 GHz band in making its finding regarding the likely dominant use of the 47 GHz band. The Commission's finding in this regard is apparently based upon the fact that Sky Station filed what it now terms an "illustrative application" in the above-referenced docket.<sup>23</sup> The Commission has utterly failed to explain why a single proposal for an untested service from a company with no track record for undertakings of the type it proposes merits greater weight than repeated assertions from leading satellite companies, which assertions have been buttressed by the filing of complete satellite system applications that utilize the 47 GHz band. While the Commission notes that HCI and Motorola filed comments in response to the Sky Station petition for rulemaking in which both parties emphasized the need for access for satellite systems to the

---

<sup>21</sup> See File Nos. 157-SAT-P/LA-96(72), 29-SAT-AMEND-97.

<sup>22</sup> See *Applications Accepted For Filing; Cut-off Established For Additional Space Station Applications and Letters of Intent in the 36-51.4 GHz Frequency Band*, SPB-89 (rel. July 22, 1997); *International Bureau Announces Anticipated Processing Rounds for Foreign Satellites to be Considered in Processing Rounds*, Report No. SPB-80 (rel. April 16, 1997); V-band NPRM at ¶ 22.

<sup>23</sup> 47 GHz Order at ¶ 32.

47 GHz band,<sup>24</sup> the Commission makes no effort whatsoever to explain why these comments were insufficient to demonstrate that satellite systems, rather than Sky Station-type services, would be the dominant use of the 47 GHz band.

Even more egregiously, the Commission has failed to explain why Motorola's M-Star application, which seeks to use the 47 GHz band and which was filed in September 1996, within five months of the Sky Station petition and proposal, is not a better bellwether as to the likely dominant use of the 47 GHz band than Sky Station's illustrative proposal.<sup>25</sup> The Commission considered the Sky Station proposal well after the closing of the original 47 GHz NPRM pleading cycle, but failed to accord the same treatment to other proposals for this band that developed since the early stages of this proceeding, including the M-Star application.<sup>26</sup> Furthermore, the Commission completely failed to discuss the comments of the satellite industry companies submitted in the Commission's umbrella proceeding in this frequency region, the V-band NPRM. This complete failure to address these significant indicia regarding the likely dominant use of the 47 GHz band is clearly arbitrary and capricious.<sup>27</sup>

The Commission's failure to address the satellite industry concerns is compounded by the fact that the Commission relied on the V-band NPRM to support the conclusions in its 47 GHz Order when it was convenient to do so,<sup>28</sup> but the Commission ignored the NPRM when the evidence there undercut its decision. The satellite industry commenters and

---

<sup>24</sup> 47 GHz Order at ¶ 61.

<sup>25</sup> The Expressway application, which utilizes the 47 GHz band, was filed on July 15, 1997, approximately one week prior to the release of the 47 GHz Order on July 21, 1997.

<sup>26</sup> The Commission merely cited the fact that the M-Star application is on file. 47 GHz Order at ¶ 70 n. 103. *See Bechtel v. FCC*, 957 F.2d 873, 881 (D.C. Cir. 1992) (Commission's response to a serious argument in a footnote inadequate).

<sup>27</sup> *See Illinois Public Telecommunications Association v. FCC*, 117 F.3d 555, 564 (D.C. Cir. 1997).

<sup>28</sup> 47 GHz Order at ¶¶ 5, 5 n. 8, 19, 36, 42, 65.

other commenters have raised serious questions about many elements of the proposals contained in V-band NPRM, including, for example, the wisdom of proceeding with a piecemeal implementation of a V-band spectrum designation plan, of which the 47 GHz Order is representative.<sup>29</sup> The Commission has not yet addressed these concerns in any manner, including in the 47 GHz Order. As a matter of equity and fairness, as well as administrative due process, the Commission cannot rely on those sections of the V-band NPRM that buttress its position in the 47 GHz Order without giving proper treatment to the comments opposing the V-band NPRM.<sup>30</sup>

Ultimately, regardless of the Commission's failure to adequately respond in the 47 GHz Order to the issues raised by the satellite industry, the Commission cannot rationally determine, upon the current record, that Sky Station-type services represent the likely dominant use of the 47 GHz band. All other things being equal, the demonstrations by the satellite industry throughout this proceeding, including three separate satellite applications for 47 GHz spectrum and other expressions of interest such as that of GE Americom, clearly present a more likely case for dominant use of the 47 GHz band than the one "illustrative proposal" submitted by Sky Station, against which no competing applications were filed, and which admits that it can conduct its operations with as little as 10 + 10 MHz of bandwidth.<sup>31</sup> Indeed, the only item that

---

<sup>29</sup> 47 GHz Order at ¶ 19 ("We found that comments had already been received on this band segment in response to the *First NPRM* on which we could proceed without delay"). The satellite industry comments in response to the V-band NPRM almost unanimously oppose this plan to proceed with piecemeal designations of spectrum in the V-band. The Commission has yet to make any response to these arguments.

<sup>30</sup> See *supra* note 14.

<sup>31</sup> See TRW Comments in response to V-band NPRM at 10-11 n. 6. In the as yet unconsidered comments filed in response to the V-band NPRM, it was also suggested that a Sky Station-type service could be accommodated at 51.2 - 52.2 GHz, where there is no conflicting satellite allocation. See Motorola Comments, IB Docket No. 97-95, at 9; TRW Reply Comments, IB Docket No. 97-95, at 9 n. 13. Moreover, the Commission's statements (*see, e.g.*, 47 GHz Order at ¶ 27) to the effect that the 47 GHz band is "uniquely suited" for stratospheric use appear groundless, as Sky Station itself has indicated that the proposed service is

may prevent the satellite industry from becoming the dominant use of the 47 GHz band is the 47 GHz Order itself.

#### **IV. THE COMMISSION'S LICENSING FRAMEWORK FOR THE 47 GHz BAND IS UNTENABLE BECAUSE IT IS BASED UPON AN IRRATIONAL FINDING**

The Commission's adoption of area-wide licensing and paired, 100 MHz license blocks is premised entirely upon the Commission's finding that Sky Station-type services are the likely dominant use of the 47 GHz band.<sup>32</sup> As demonstrated above, this premise is unsupported and irrational. As such, the adoption of area-wide licensing and paired, 100 MHz license blocks, which mirrors exactly Sky Station's proposed channelization plan, is likewise unsustainable. Indeed, the 47 GHz Order contains no discussion of the impact of the Commission's flexible framework upon satellite use of the 47 GHz band, despite explicitly concluding that the band is allocated for that use. Furthermore, at one point in the 47 GHz Order the Commission seems to suggest, despite other assurances that all allocated services will be permitted to utilize the 47 GHz band under the 47 GHz Order, that the effect of the 47 GHz Order will be to accommodate Sky Station and other terrestrial services, but not satellite systems.<sup>33</sup> Indeed, both the Commission and Sky Station, essentially concede that the deployment of Sky Station-type services will likely have a preclusive effect on satellite use of the same frequency band.<sup>34</sup> Thus, the Commission also must reconsider the proposed licensing framework for the 47 GHz band.

---

not so frequency band sensitive. *See* Further Comments of Sky Station International, Inc. at 2 (filed December 24, 1996).

<sup>32</sup> *See* 47 GHz Order at ¶¶ 79, 82.

<sup>33</sup> 47 GHz Order at ¶ 37 ("the spectrum Sky Station seeks to use is the subject of this proceeding in which rules can be proposed to accommodate its service, as well as *other terrestrial services in 47 GHz*") (emphasis added).

<sup>34</sup> *See* 47 GHz Order at ¶¶ 30, 37; Further Comments of Sky Station International, Inc. at 2.

## V. THE COMMISSION HAS FAILED TO PROVIDE ADEQUATE NOTICE

The Commission's decision is further undercut by its failure to follow required notice provisions of the Administrative Procedure Act when it changed the nature of the proposal in this rulemaking. Namely, the Commission has improperly adopted a decision that relies entirely on (i) a position articulated for the first time in a late-filed *ex parte* submission to which the other parties neither consented nor were provided an opportunity to respond,<sup>35</sup> and (ii) a proposal that "raise[s] issues not addressed" in the Commission's proposals.<sup>36</sup>

After having encountered a stalemate with the satellite industry over its original proposal to allocate part of the 47.2-48.2 GHz band to a new service called "GSTS," Sky Station changed the fundamental nature of its proposal on Christmas Eve, 1996, when it submitted "late filed comments" in this proceeding. Those late filed comments, on which the Commission bases in its decision,<sup>37</sup> changed the fundamental nature of what previously was proposed as they advocate that the Commission prevent satellite systems from operating in this part of the band.<sup>38</sup> The licensing framework adopted in the 47 GHz Order reflects this late-filed proposal, is intended to accommodate Sky Station-type systems, and will likely preclude satellite systems from sharing the same spectrum.

A basic tenant of administrative due process is that parties in a notice and comment rulemaking must be given notice of, and a meaningful opportunity to comment on, the alternative being considered. The Commission simply may not summarily alter the course of this proceeding by relying on these late-filed Sky Station comments.

---

<sup>35</sup> *American Federation of Labor v. Donovan*, 757 F.2d 330, 340 (D.C. Cir 1985)(Commission cannot bootstrap notice from a comment filed by one party).

<sup>36</sup> See 47 GHz Order at ¶ 20.

<sup>37</sup> 47 GHz Order at ¶ 29-32.

<sup>38</sup> See *id.* at ¶ 30.

## **VI. CONCLUSION**

The 47 GHz Order cannot be sustained on the present administrative record. The Commission's actions in the 47 GHz Order hinge upon the Commission's finding that the likely dominant use of the 47 GHz band will be "fixed, point to multi-point services delivered through the deployment of fixed platforms located in the stratosphere." This finding is unsupported by the current administrative record and fails to address significant evidence that satellite systems will be deployed in this band. Furthermore, the remainder of the Commission's actions in the 47 GHz Order (which establish a licensing framework for the 47 GHz band) also must be reconsidered because they are based entirely upon this untenable finding. Moreover, use of this band should be considered as part of the ongoing omnibus proceeding to allocate the V-band.

Respectfully submitted,

MOTOROLA SATELLITE SYSTEMS, INC.

HUGHES COMMUNICATIONS, INC.

By: Brent Weingardt/ask

Philip L. Malet  
Brent H. Weingardt  
Steptoe & Johnson, LLP  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036  
(202) 429-3000

By: Arthur S. Landerholm

Gary M. Epstein  
John P. Janka  
Arthur S. Landerholm\*  
LATHAM & WATKINS  
1001 Pennsylvania Ave., N.W.  
Suite 1300  
Washington, DC 20004  
(202) 637-2200

Counsel For Motorola Satellite Systems, Inc.

Counsel For Hughes Communications, Inc.

TRW INC.

GE AMERICAN COMMUNICATIONS, INC.

By: Stephen D. Baruch/bk

Norman P. Leventhal  
Stephen D. Baruch  
David S. Keir  
Leventhal, Senter & Lerman  
2000 K. Street, N.W., Ste. 600  
Washington, DC 20006  
(202) 429-8970

By: Peter A. Rohrbach/ask

Peter A. Rohrbach  
Karis Hastings  
Hogan & Hartson  
555 Thirteenth Street, N.W.  
Washington, DC 20004  
(202) 637-5600

Counsel For TRW Inc.

Counsel For GE American Communications, Inc.

Dated: September 11, 1997